111-197

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 256.

BARZILLA STEPHENS, PLAINTIFF IN ERROR,

vs.

THE MONONGAHELA NATIONAL BANK OF BROWNSVILLE, PENNSYLVANIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED JUNE 27, 1881.

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1 Among the rolls, records, and judicial proceedings had in the Circuit Court of the United States in and for the western district of Pennsylvania, entered at No. 107, May term, 1879, wherein the Monongahela National Bank of Brownsville, Pa., a corporation organized and doing business under the laws of the United States, and within the western district of Pennsylvania, is plaintiff, and Barzilla Stevens is defendant, may be found the following words and figures, to wit:

Appearance docket entries.

THE MONONGAHELA NATIONAL BANK of Brownsville, Pa., a corporation organized and doing business under the laws of the *laws of the* United States, and within the western district of Pennsylvania,
vs.
BARZILLA STEPHENS.
No. 107, May term 1879.

[On margin:] Knox & Reed. A. A. Purman, P. A. Knox.

Precipe, affidavit of claim, and copy of note sued upon, filed April 2d, 1879.

Same day. Summons in assumpsit issued, returnable first Monday of April, 1879.

1879, April 4. Declaration filed.

1879, April 4. Summons served upon Barzilla Stephens by leaving a true copy thereof with an adult member of his family at his residence. Mar., $6.72.

2 1879, April 9. Upon motion of defendant's attorney and affidavit presented, order granted extending time for filing affidavit of defense in the above cause till 24th instant, filed at No. 106, May T., 1879.

1879, April 24. Affidavit of defense filed.

1879, April 26. On motion of plaintiff's attorneys, rule granted upon defendant to show cause why judgment should not be entered in this case in default of a sufficient affidavit of defense, and reasons therefor filed. Same day, copy rule mailed to defendant's attorney at Waynesburg, Pa., filed at No. 106, May T., 1879.

1879, April 30. Receipt for costs filed.

1879, May 1. Rule to show cause returned, service accepted by defendant's attorney.

1879, May 27. Notice of hearing of rule to show cause filed.

1879, May 27. Supplemental affidavit of defense filed.

1879, May 27. Argument upon rule for judgment in default of sufficient affidavit of defense, and same made absolute.

1879, May 27. Upon precipe filed, and in pursuance of order of court, judgment is hereby entered in favor of plaintiff and against defendant for the sum of twelve thousand and seventy-eight and 87-100 ($12,078.87) dollars. H. D. Gamble, clerk.

1879, May 27. Fi. fa. No. 9, Nov. term, 1879, issued.
1879, July 2. Ex. att. No. 23, Nov. term, 1879, issued.
1879, July 3. Ex. att. served.
1879, August 7. Fi. fa. returned Tarde venit.
1880, July 20. Alias fi. fa. No. 9, Nov. term, 1880, issued.
3 1880, October 20. Fi. fa. returned.
1880, December 30. Vend. ex. No. 3, May term, 1881, issued.
1881, March 21. Vend. ex. returned.
1881, May 18. Petition praying for the allowance of a writ of error herein filed, and writ of error commanding the return with said writ the record and proceedings in the above cause to the Supreme Court of the United States, at Washington, D. C., on the second Monday of October next, allowed by the circuit judge and citation signed, returnable on a like day with the writ of error, and duly filed.

4 *Precipe for Summons—Affidavit of Claim.*

Circuit Court of the United States in and for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK of Brownsville, Pa., a corporation organized under the laws of the United States and doing business at Brownsville, in the western district of Pa., *vs.* BARZILLA STEVENS. } No. 107, May term, 1879.

To H. D. GAMBLE, esq., clerk:

Issue summons in assumpsit, returnable to next return day.

KNOX & REED,
April 2nd, 1879. *Pl'ff's Att'ys.*

WESTERN DISTRICT OF PENNA., *ss.*

Before the subscriber personally came P. C. Knox, attorney for and agent in this behalf for the plaintiff, who, being by me duly sworn according to law, deposes and says:

1st. That the plaintiff, the Monongahela National Bank, is a corporation or association duly organized and incorporated under and by virtue of the act of Congress of June 3rd, 1864, now title LXII of the Revised Statutes of the United States relating to national banks; that said association was so organized in the year 1865;
5 that it is located at Brownsville, within the western district of the commonwealth of Pennsylvania, where it has been carrying on business since the date of its organization aforesaid.

2d. That by virtue of the act of Congress aforesaid plaintiff was empowered through its board of directors or duly authorized officers

or agents to exercise all the powers incidental and necessary to carry on the business of banking, including, *inter alia*, the powers of discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of indebtedness—of loaning money on personal security.

3rd. That under the provisions of said act of Congress, plaintiff was empowered to take, receive, reserve and charge on loans and discounts made, and upon notes, bills of exchange, and other evidences of debt, interest at the rate allowed by the laws of the state where it is located; also where, by the laws of any state, a different rate is limited for banks of issue organized under state laws, the rate so limited is allowed for associations organized or existing in such, under title LXII of the Revised Statutes. That plaintiff, being an association organized and existing in the state of Pennsylvania under title LXII of the Revised Statutes of the United States, was at the dates and times mentioned hereafter, to wit, at the time the original of the note embraced in this suit was discounted, and
6 now is allowed to charge a rate of interest equal to the rate limited or allowed by the laws of Pennsylvania for a bank or banks of issue organized under the laws of said commonwealth.

4th. That under the laws of the state of Pennsylvania there are now organized and have been organized from and since the dates of their respective charters (true copies of which are annexed to and made part of this affidavit of claim), certain banks of issue, permitted by said laws to charge and receive such rates of interest as may be agreed upon by the parties; that said banks have been carrying on business in the state of Pennsylvania since the date of their organization, and are now carrying on business in said state under the provisions of said laws.

5th. That the names of said banks and the titles of the acts of the assembly of the state of Pennsylvania creating them, with the dates of the approvals of said acts, are as follows, to wit:

An act entitled "An act to incorporate the People's Bank of Philadelphia," approved February 25, 1870.

An act entitled "An act to incorporate the United States Banking Company," approved June 2nd, 1871.

7 An act entitled "An act to incorporate the Butchers' and Drovers' Bank," approved April 27th, 1871; an act entitled "An act to incorporate the Franklin Bank of the city of Philadelphia," approved April 1, 1870. True copies of each of said acts of assembly marked respectively "A," "B," "C," "D," are annexed to this affidavit and made a part of it.

7. That the said defendant, Barzilla Stephens, is indebted to the plaintiff in the sum of nine thousand five hundred dollars ($9,500), with interest thereon from the 19th day of November, A. D. 1874, and in the further sum of one dollar and eighty-seven cents ($1.87) protest fees as the endorser upon a certain promissory note, a true copy of which is annexed to and made a part hereof. That said note was discounted by plaintiff, became its property for value, be-

treasurer and financial agent of charitable and religious institutions and corporations, and as financial agent of the state of Pennsylvania and other states, of city governments, and counties and districts, in the management of their business, and shall give security to such institutions, states and governments for the faithful performance of the duties if required.

SECTION 8. The board of directors shall have power to declare and pay dividends out of the earnings of the bank to the stockholders at such times and in such amounts as to them may seem proper.

SECTION 9. The annual election for president and directors shall be on the first Monday of June of each year, unless changed by the by-laws of the bank; the directors shall have power to elect all officers or agents as they may deem necessary for conducting the business of the bank, except president; stockholders shall be entitled to one vote for each share of stock, and may vote in person or by a written proxy, but said proxy must be dated within six months of and
13 five days prior to the election for which such proxy was given; five days' notice by publication in one or more of the city papers shall be given of the time and place where such election shall be held, and said election shall be conducted according to the by-laws.

SECTION 10. That the said corporation shall pay into the treasury of the commonwealth such bonus and taxes as are now or may hereafter be required by law.

SECTION 11. That the stockholders shall be personally liable to an amount equal to the capital stock in addition thereto, and this charter shall continue for twenty years.

BUTLER B. STRANG,
Speaker of the House of Representatives.
CHARLES H. STINSON,
Speaker of the Senate.

Approved the twenty-seventh day of April, anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

14 *Exhibit B.*

No. 229.—AN ACT to incorporate the People's Bank of the city of Philadelphia.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same*, That Charles A. Miller, John A. Fowler, Joseph B. Walker, D. R. Barclay, D. B. McGinley, John P. Green, O. P. Morrow, and their associates and successors shall be and they are hereby created a body politic and corporate by the name and style of the People's Bank of Philadelphia, to be located in the city of Philadelphia, and by that name shall have per-

petual succession, and may sue and be sued, plead and be impleaded in any court whatsoever; may have a common seal; may renew or alter the same; also may have the right to own and hold real estate, and improve or dispose of the same at pleasure.

SECTION 2. The capital stock of said bank shall consist of one thousand shares of the value of one hundred dollars each, with the privilege of increasing the same, by a vote of the directors, to five thousand shares of like value per share, and when the capital stock is so increased the stockholders shall have the right to take the shares authorized by such increase at such price as the board of directors may name: *Provided*, That if such shares of new stock are not taken by the stockholders within ten days after receiving notice of such increase, then the board of directors may dispose of such shares of new stock in such manner as they may deem best.

SECTION 3. The corporators or a majority of them shall have power to open books for subscription to the capital stock, at such times and places as they may deem expedient, and when one thousand shares or more of said stock shall have been subscribed, and ten per centum thereon of the same paid in, the shareholders may elect a president and six directors, to serve until the next annual election or until their successors shall have been duly elected and qualified; vacancies arising from death, resignation, or inability to serve to be filled by the board.

SECTION 4. The said bank shall have power and may borrow or lend money for such periods as the said bank may think proper; may discount any bill of exchange, foreign or domestic, promissory note or other negotiable paper, and the interest may be received in advance; and shall have the right to hold in trust, or as collateral security for loans or advances or discounts, estate, real, personal, or mixed, including the notes, bonds, obligations, or accounts of the United States, states, individuals, or corporations, and to purchase, collect, and adjust the same and to dispose thereof for the benefit of the said bank, or for the payment of the debts as security for which the same may be held in any market of the world, without proceedings in law or equity, and for such price and such terms as may be agreed upon by the said corporation and the parties contracting therewith.

SECTION 5. The board of directors shall make all by-laws necessary for properly conducting the business of the bank, not inconsistent with the laws of the state or United States, and shall have power to require payments of any amounts remaining unpaid on the stock of said bank, at such times and in such proportions as they think proper, and after thirty days' notice, under penalty, in case of nonpayment as required, of forfeiture to the bank of such stock and all previous payments thereon.

SECTION 6. The said bank may receive money to keep for its depositors, either with or without interest payable thereon, and may buy or sell bullion, *by*, sell, draw, or negotiate bills of exchange,

bills of lading, stocks and bonds of all companies, states, and of the United States, or other good and sufficient securities, at such rates of interest as may be agreed upon by said bank and the borrowers.

SECTION 7. That it shall be lawful for said bank to transact financial business as a natural person, and as such to become and act as a treasurer and financial agent of charatable and religeous institutions and corporations, and as financial agent of the state of Pennsylvania and other states, of city governments, and counties and districts, in the management of their business, and shall give security to such institutions, states, and governments for the faithful performanee of the duties, if required.

SECTION 8. The board of directors shall have power to declare and pay dividends out of the earnings of the bank to the stockholders, at such times and in such amounts as to them may seem proper.

SECTION 9. The annual election for president and directors shall be on the second Tuesday of January of each year, unless changed by the by-laws of the bank; the directors shall have power to elect all officers or agents they may deem necessary for conducting the business of the bank, except president; stockholders shall be entitled to one vote for each share of stock, and may vote in person or by a written proxy, but said proxy must be dated within six months of and five days prior to the election for which such proxy was given; five days' notice by publication in one or more of the city papers shall be given of the time and place where such election will be held, and said election shall be conducted according to the by-laws.

SECTION 10. That the said corporation shall pay into the treasury of the commonwealth such bonus and taxes as are now or may hereafter be required by law.

SECTION 11. That the stockholders shall be personally liable to an amount equal to the capital stock in addition thereto; and this charter shall continue for twenty years.

BUTLER B. STRANG,
Speaker of the House of Representatives.
CHARLES H. STINSON,
Speaker of the Senate.

Approved the twenty-seventh day of April, anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

Exhibit C.

No. 676.—AN ACT to incorporate the Franklin Bank of the city of Philadelphia.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same:* That R. D. Barclay, J. P. Green, S. S. Moon and James M. Sellers and their associates and successors shall be and they are hereby created a body politic and corpor-

ate, by the name and style of the Franklin Bank of Philadelphia, to be located in the city of Philadelphia, and by that name shall have perpetual succession, and may sue and be sued, plead and be impleaded in any court whatsoever; may have a common seal; may renew or alter the same; also, may have the right to own and hold real estate, and improve or dispose of the same at pleasure.

SECTION 2. The capital stock of said bank shall consist of five thousand shares of the value of one hundred dollars each, with the privilege of increasing the same from time to time by a vote of the directors to an amount not exceeding ten thousand shares of like value per share; and when the capital stock is so increased, the stockholders shall have the right to take the shares authorized
20 by such increase, at such price as the board of directors may name: *Provided*, That if such shares of new stock are not taken by the stockholders within ten days after receiving notice of such increase, then the board of directors may dispose of such shares of such stock in such manner as they may deem best.

SECTION 3. The corporators or a majority of them shall have power to open books for subscription to the capital stock at such times and places as they may deem expedient, and when one thousand shares or more of said stock shall have been subscribed, and ten per centum thereon of the same paid in, the shareholders may elect a president and six directors to serve until the next annual election or until their successors shall have been duly elected and qualified; vacancies arising from death, resignation, or inability to serve, to be filled by the board.

SECTION 4. The said bank shall have power and may borrow or lend money for such periods as the said bank may think proper; may discount any bill of exchange, foreign or domestic, promissory note or other negotiable paper, and the interest may be received in advance at such rates as may be agreed upon by the parties; and shall have the right to hold in trust, or as collateral security for loans or advances or discounts, estate, real, personal, or mixed,
21 including the notes, bonds, obligations, or accounts of the United States, individuals, or corporations, and to purchase, collect, and adjust the same, and to dispose thereof for the benefit of the said bank, or for the payment of the debts as security for which the same may be held in any market of the world, without proceedings in law or equity, and for such price and such terms as may be agreed upon by the said corporation and the parties contracting therewith.

SECTION 5. The board of directors shall make all by-laws necessary for properly conducting the business of the bank, not inconsistent with the laws of the state or United States, and shall have power to require payments of any amount remaining unpaid on the stock of said bank at such times and in such proportions as they think proper, and after thirty days' notice, under penalty, in case of nonpayment as required, of forfeiture to the bank of such stock and all previous payments thereon.

SECTION 6. The said bank may receive money to keep for its depositors, either with or without interest payable thereon, and may buy or sell bullion, buy, sell, draw, or negotiate bills of exchange, bills of lading, stocks and bonds of all companies, states, and of the United States, or other good and sufficient securities, at such rates of interest as may be agreed upon by said bank and the borrowers.

22 SECTION 7. That it shall be lawful for said bank to transact financial business as a natural person, and as such to become and act as a treasurer and financial agent of charitable and religeous institutions and corporations, and as financial agent of the state of Pennsylvania and other states, of city governments, and counties and districts, in the management of their business, and shall give security to such institutions, states, and governments for the faithful performance of the duties, if required.

SECTION 8. The board of directors shall have power to declare and pay dividends out of the earnings of the bank to the stockholders, at such times and in such amounts as to them may seem proper.

SECTION 9. The annual election for president and directors shall be on the second Tuesday of January of each year, unless changed by the by-laws of the bank; the directors shall have power to elect all officers or agents they may deem necessary for conducting the business of the bank, except president. Stockholders shall be entitled to one vote for each share of stock, and may vote in per-

23 son or by a written proxy, but said proxy must be dated within six months of and five days prior to the election for which said proxy was given; five days' notice by publication, in one or more of the city papers, shall be given of the time and place where such election will be held, and said election shall be conducted according to the by-laws.

SECTION 10. That the said corporation shall pay into the treasury of the commonwealth such bonus and taxes as are now or may hereafter be required by law; and this charter shall continue for twenty years.

BUTLER B. STRANG,
Speaker of the House of Representatives.
CHARLES H. STINSON,
Speaker of the Senate.

Approved the first day of April, anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

24 *Exhibit D.*

No. 1054.—AN ACT to incorporate the United States Banking Company, located at Philadelphia.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania in general assembly met, and it is*

hereby enacted by the authority of the same, That John Jordon, William Watson, Edward Watson, D. B. McGinley, W. G. McAllister, W. W. Bell, H. B. Dich, and their assigns, proxys, associates and successors, shall be and they are hereby created a body politic and corporate by the name and style of the United States Banking Company, located at Philadelphia, and by that name shall have perpetual succession, and may sue and be sued, plead and be pleaded in any court soever; may have a common seal; may renew or alter the same; also, may have a right to own and hold real estate, and improve or dispose of the same at pleasure.

SECTION 2. That the capital stock of said bank shall consist of one thousand shares of the value of one hundred dollars each, with the privilege of increasing the same from time to time by a vote of the directors to an amount not exceeding fifty thousand shares of like value per share; and when the capital stock is so increased, the stockholders shall have the right to take the shares authorized by such increase at such price as the board of directors may name: *Provided*, That if such shares of new stock are not taken by the stockholders within ten days after receiving notice of such increase, then the board of directors may dispose of such shares of such stock in such manner as they may deem best.

SECTION 3. The corporators or a majority of them shall have power to open books for subscription to the capital stock, at such times and places as they may deem expedient, and when one thousand shares or more of said stock shall have been subscribed, and thirty per centum of the same thereon paid in, the shareholders may elect a president and twelve directors to serve until the next annual election or until their successors shall have been duly elected and qualified; vacancies arising from death, resignation or inability to serve, to be filled by the board.

SECTION 4. The said bank shall have power and may borrow or lend money for such periods as the said bank may think proper, may discount any bill of exchange, foreign or domestic, promissory note or other negotiable paper, and the interest may be received in advance, at such rates as may be agreed upon by the parties; and shall have the right to hold in trust, or as collateral security for loans or advances or discounts, estate, real, personal, or mixed, including the notes, bonds, obligations, or accounts of the United States, individuals, or corporations, and to purchase, collect, and adjust the same, and to dispose thereof for the benefit of said bank, or for the payment of the debts as security for which the same may be held in any market of the world, without proceedings in law or equity, and for such price and such terms as may be agreed upon by the said corporation and the parties contracting therewith.

SECTION 5. The board of directors shall make all by-laws necessary for properly conducting the business of the bank, not inconsistent with the laws of the state or United States, and shall have power to require payments of any amount remaining unpaid on the stock of said bank, at such times and in such places as they think proper, and after thirty days' notice, under penalty, in case of non-

payment as required, of forfeiture to the bank of such stock and all previous payments thereto.

SECTION 6. The said bank may receive money to keep for its depositors, either with or without interest payable thereon, and may buy or sell bullion, buy, sell, draw, or negotiate bills of exchange, bills of lading, stocks and bonds of all companies and of the United states, or other good and sufficient securities, at such rates of interest, as may be agreed upon by said bank and the borrowers.

SECTION 7. That it shall be lawful for said bank to transact financial business as a natural person, and as such to become and
27 act as a treasurer and financial agent of the state of Pennsylvania and other states, of city governments, and counties and districts, in the management of their business, and shall give security to such institutions, states, and governments for the faithful performance of the duties, if required.

SECTION 8. The board of directors shall have power to declare and pay dividends out of the earnings of the bank to the stockholders, at such times and in such amounts as to them may seem proper.

SECTION 9. The general election for president and directors shall be on the second Tuesday of January of each year, unless changed by the by-laws of the bank; the directors shall have power to elect all officers or agents they may deem necessary for conducting the business of the bank, except president; stockholders shall be entitled to one vote for each share of stock and may vote in person or by written proxy, but said proxy must be dated within six months of and five days prior to the election for which such proxy was given; five days' notice by publication in one or more of the city newspapers shall be given of the time and place where such elections shall be held, and said election shall be conducted according to the by-laws.

SECTION 10. That the said corporation shall pay into the
28 treasury of the commonwealth such bonus and taxes as are, may now, or may hereafter be required by law; and this charter shall continue for twenty years.

Approved the second day of June, A. D. 1871.

JNO. W. GEARY.

(Endorsed:) No. 107. May term, 1879. Monongahela National Bank *vs.* Barzilla Stephens. Precipe. Affidavit of claim and copy of note. Filed April 2, 1879. Knox & Reed.

29 *Summons.*

UNITED STATES,
Western district of Pennsylvania, } *sct.*

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you that you summon Barzilla Stephens, late of your district, if he may be found therein, so that he be and appear

before the judges of the Circuit Court of the United in and for the western district of Pennsylvania, in the third circuit, at a session of the same court to be holden at Pittsburgh on the first Monday of April, 1879, to answer the Monongahela National Bank of Brownsville, Pa., a corporation organized under the laws of the United States, and doing business at Brownsville, within the western district of Pennsylvania, in an action in assumpsit.

And have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this 2d day of April, A. D. 1879, and in the 103rd year of the Independence of the said United States.

[SEAL.] H. D. GAMBLE, *Clerk.*

30 (Endorsed:) No. 107. May term, 1879. Circuit Court of the United States. The Monongahela National Bank of Brownsville, Pa., *vs.* Barzilla Stephens. Summons. Marshal service, $2.50; mileage, $4.22—$6.72. Knox & Reed, attorneys for plaintiff.

WAYNESBURG, PA.

Served the within writ on Barzilla Stephens by leaving a copy with an adult member of his family April 4, 1879, at his residence in Greene co.

JOHN HALL, *U. S. M.*,
Per J. H. CAMPBELL,
Deputy U. S. M.

31 *Narr.*

In the Circuit Court of the United States for the western district of Pennsylvania.

Barzilla Stephens, the defendant, was summoned to answer the Monongahela National Bank of Brownsville, a corporation organized and doing business under the laws of the United States, located at Brownsville, within the western district of Pennsylvania, the plaintiff, of a plea of trespass on the case. Whereupon the said plaintiff by Knox & Reed, its attorneys, complains for that whereas Israel Stephens on the 16th day of May, in the year of our Lord one thousand eight hundred and seventy-four, at Brownsville, to wit, at the district aforesaid, did make his certain promissory note in writing and delivered the same to Barzilla Stephens, and thereby promised to pay to the order of Barzilla Stephens the sum of nine thousand five hundred dollars at the Monongahela National Bank of Brownsville in six months after the date thereof, which period has now elapsed, and the said Barzilla Stephens then and there endorsed and delivered the same to R. S. Long, and the said R. S. Long then and there endorsed and delivered the same to Israel Stephens, and the said Israel Stephens then and there endorsed and delivered the same to the said plaintiff, and the said Barzilla Stephens did not
32 pay the amount thereof, although the same presented to him on the day when it became due, of all which the defendant

then and there had due notice. By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said plaintiff the said sum of money in said note mentioned, and being so liable he, the said defendant, on himself did assume and to the said plaintiff did promise the payment of the said sum of money in said note mentioned when he should be thereunto afterwards required. And whereas also said defendant heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and seventy-nine, at Pittsburgh, in the district aforesaid, was indebted to the said plaintiff in the sum of twenty thousand dollars for the price and value of goods, wares and merchandise then and there sold and delivered by the plaintiff to the defendant at his request.

And in the sum of twenty thousand dollars for the price and value of work then and there done and the material for the same provided by the plaintiff for the defendant at his request.

And in the sum of twenty thousand dollars for money then and there lent and advanced to and paid, laid out, and expended by the plaintiff for the defendant at his request.

33 And in the sum of twenty thousand dollars for money then and there received by the defendant for the use of the plaintiff, and in the sum of twenty thousand dollars for money found to be due from the defendant to the plaintiff on an account then and there stated between them.

And whereas the defendant afterwards, to wit, the day and year aforesaid, in consideration of the premises then and there promised to pay the said several sums of money respectively to the plaintiff on request, yet hath disregarded his promises and hath not paid any of his said moneys, or any part thereof; to the plaintiff damage twenty thousand dollars, and therefore it brings suit.

KNOX & REED,
Attorneys for Plaintiff.

(Endorsed:) No. 107; May term, 1879; the Monongahela National Bank of Brownsville, Pa., *vs.* Barzilla Stephens; narr; filed April 4, 1879; K. & R.

34 *Affidavit of Defence.*

In the Circuit Court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK of Brownsville, Pa., a corporation organized under the laws of the United States and doing business at Brownsville, in the western district of Pa., *vs.* BARZILLA STEPHENS. } No. 107 of May term, 1879.

WESTERN DISTRICT OF PENNA., *ss.*

Barzilla Stevens, the defendant, being duly sworn, says that he

has a just and legal defence to the whole of the plaintiff's claim in this suit, the nature and character of which is as follows:

1. That the said Circuit Court of the United States for the western district of Pennsylvania has no jurisdiction over this case for the following reasons, to wit:

That the plaintiff bank on the 13th day of April, 1875, brought suit against the defendant on the same note which is the basis of this suit, and for the same cause of action in the Court of Common Pleas of Greene county, Pa., at No. 54, June term, 1875; the defendant being summoned to appear in said Com-
35 mon Pleas on the 1st Monday of May, 1875; that the defendant appeared accordingly, made affidavit of defence to the whole of plaintiff's claim, and put in his pleas of set-off, etc. The case being put at issue, it was tried before a jury in said Court of Common Pleas, on April 11, 1876, and a verdict rendered against defendant for the sum of $9,210.57. During the trial certain exceptions to the rulings of the court were taken by both the plaintiff and defendant. Judgment having been entered on said verdict, the defendant, by writ of error at No. 113, Oct. and Nov. term, 1876, removed the record in said cause—No. 54, June term, 1875—into the Supreme Court of Pennsylvania for review. Paper books were prepared on both sides, and said case was argued in said Supreme Court on Nov. 19, 1878. On January 6, 1879, said Supreme Court rendered its decision reversing the court below, and sent the case back for retrial in said Common Pleas. That said case was put down for trial again at the head of the list of causes for trial at April term, 1879, in and by the order of said Common Pleas; that on March 19, 1879, after said case was so put down for retrial, the plaintiff bank, by Messrs. Sayers and Sayers, its attorneys, wrote at the foot of the appearance docket entries of said case, the following words, to wit: "We hereby discontinue this suit, March 19,
36 1879, (signed) Sayers & Sayers, att'ys for pl'ff"; that such entry was made without the knowledge or consent of the defendant, without any leave had or obtained therefor from said Court of Common Pleas, and without the costs in said suit being paid; that the defendant has never assented to such discontinuance; that no leave therefor from said Court of Common Pleas has been obtained and the costs have not been paid; that the plaintiff has attempted such discontinuance and brought the present suit for the purpose of vexing and oppressing the defendant, and causing him to litigate the case at a great distance from his home and the homes of his witnesses, and at greatly increased cost, trouble and expense; that thereby the defendant has been obliged to employ additional counsel, resident at Pittsburgh, and will be put to great additional and unnecessary expense by a trial of this case there, which he cannot recover from the plaintiff; that the plaintiff has attempted such discontinuance for the further purpose of raising in this court the question whether, at the time the note in suit and the prior notes of which it was the last renewal were taken by said bank,

there were in Pennsylvania state banks of issue authorized by the laws of said state to take, receive, re-
37 serve and charge upon their loans and discounts interest at the rate of nine (9) per cent. per annum, or at such rate as might be agreed upon between the borrower and such alleged banks of issue, and for the purpose of preventing in this case a final determination of said questions by the Supreme Court of Pennsylvania. That at the time of such attempted discontinuance and the bringing of this suit the plaintiff knew that said U. S. Circuit Court had decided said question adversely to the views of the defendant and his counsel, and, being fearful that the Supreme Court of Pa. would decide the said question differently from said U. S. Circuit Court when this case should again go up to said Supreme Court from the Court of Common Pleas of Greene county, Pa., where the pl'ff originally brought it, the plaintiff, after pursuing the defendant from April 13th, 1875, to March 19, 1879, in the courts of said state, seeks to deprive the defendant of the right to have said question decided and set at rest by the Supreme Court of Pa. That said question involves the construction of certain Pennsylvania statutes, and the plaintiff knew that a decision thereof by the Supreme Court of Pa. would be
38 final and conclusive and would be binding upon the parties and the courts of the United States. The plaintiff therefore attempted to prevent such final decision of the question, and hopes thereby to get judgment against the defendant, by its said illegal proceedings, for a larger sum than it is legally entitled to recover. The defendant submits that his rights should not thus be disregarded.

2. That the Court of Common Pleas of Greene county, Pa., first acquired jurisdiction over the parties and the cause of action in this suit by the act of the plaintiff bank, and still retains such jurisdiction to the exclusion of this court.

3. That the defendant never got any of the money loaned upon the original of the note in suit, or any of its renewals, and, if at all liable thereon (which he denies), he was, at the times said notes were taken, known to the plaintiff bank to be and was nothing more than an accommodation endorser or surety thereon for Israel Stephens and R. S. Long, who were both known to said bank to be the real debtors on said notes.

4. That the plaintiff, being a national bank, organized in 1865, under the act of Congress of June 3, 1864, relating to national banks, and located at Brownsville, in the state of Pennsyl-
39 vania, had, at the time the note in suit and the prior notes of which it was the last renewal were taken, no right to take, receive, reserve and charge interest and discount on its loans, or lend money at the rate of nine (9) per cent. per annum, or at any rate of interest higher than six (6) per cent. per annum in advance. That at the times said notes were taken there were no *state banks of issue* in the state of Pennsylvania authorized by their charter, or the laws of Pennsylvania, to lend money at the rate of nine (9) per cent. per annum, or at any greater rate of interest than six (6) per

cent. per annum in advance. That the banks named in plaintiff's affidavit of amount due, to wit, the Peoples' Bank of Philadelphia, the United States Banking Company, the Butchers' and Drovers' Bank and the Franklin Bank of the city of Philadelphia, were not, and never have been, *banks of issue*, and never issued their own bank notes. That the said Franklin Bank of the city of Philadelphia never did business. That the said Butchers' and Drovers' Bank did not commence business till September 26, 1871, and the said U. S. Banking Company did not begin business till September, 1873, both dates being subsequent to the taking of the original of
40 the note in suit, and said last date being also subsequent to the 4th renewal of the original note. The said Butchers' and Drovers' Bank surrendered its state charter and afterwards became the Keystone National Bank. The U. S. Banking Company failed and quit business. The banks named were deposit and discount banks, and not *banks of issue* in any sense.

5. That the original of the note in suit was discounted and taken by the plaintiff bank on June 27, 1871, the money loaned and advanced thereon to Israel Stephens, the maker of the note, being $8,434.65. That said original note and loan was renewed by six (6) subsequent notes made by Israel Stephens, the last being the note in suit. That upon said loan and each of its renewals the plaintiff bank knowingly took, received, reserved, and charged interest at the rate of nine (9) per cent. per annum, the interest so taken aggregating $2,736.50. That all of said interest was so knowingly taken, received, reserved, and charged by the plaintiff bank contrary to law, and the defendant is entitled to set off the same against the money loaned on the original of the note in suit. That by reason of exacting and taking the usurious interest aforesaid the plaintiff forfeited said entire interest and is not entitled to receive or
41 claim any interest upon said loan, or upon the note in suit.

6. That the plaintiff bank has knowingly taken, received, reserved, and charged at various times within the six years immediately prior to April 11th, 1876, when the defendant put in his plea of set-off against the plaintiff's claim on the note in suit in the Court of Common Pleas of Greene county, Pa., discount and interest in excess of the amount permitted by its fundamental law upon *other* loans made by it to Israel Stephens, a principal debtor on and maker of the note in suit, which illegal interest amounts to the sum of $3,532.00, and all of which is a proper set-off against the plaintiff's claim in this suit, provided defendant does not get credit therefor in case No. 108 of May term, 1879.

7. That the plaintiff has in its possession, or power, a large sum of money, to wit, the sum of $3,241.10, which it has illegally taken and received from one R. S. Long within the six years immediately prior to April 11, 1876, (when the defendant put in his plea of set-off against the plaintiff's claim on the note in suit in the Court of Common Pleas of Greene county, Pa.,) as principal, interest, and
42 discount on *various other* loans made by plaintiff. That R. S.

Long was a principal debtor upon the original of the note in suit and its several renewals, and was so known to the plaintiff. The defendant is, therefore, entitled to credit in this suit for said sum of $3,241.10 so illegally taken and received by the plaintiff from said Long, provided defendant does not get credit therefor in case No. 108 of May term, 1879; $1,891.10 of said sum was so illegally taken by the plaintiff on November 3d, 1874.

8. That the paper upon which the note in suit was written had no writing upon it at the time it was delivered to the plaintiff bank, except the names of B. Stephens and R. S. Long across the back of it; that the plaintiff, by its teller, then and there wrote the whole of the body of the note—the defendant not being present; that the note so written was then signed by Israel Stephens, the maker and last endorser thereof, and filed away by the bank without being submitted to the defendant for his approval; that the plaintiff bank knowingly took, received, reserved, and charged interest upon said note, at the time it took the same, in excess of six (6) per cent. per annum in advance, without the knowledge or consent of the defendant; that said bank, by its teller, illegally and knowingly, and without
43 the knowledge or consent of defendant, drew the note in suit for the sum of $9,500.00, and at the same time knew, in view of the usury taken by the plaintiff from Israel Stephens, that there was then less than $6,000.00 due on the original loan, or to become due thereon, on the due date of the note in suit. That the defendant by his endorsement of said blank paper only authorized the the plaintiff bank to draw a renewal note thereon for the amount actually and legally due on the loan, or to become due thereon at the date of the note in suit, and only authorized legal interest to be taken for the time the note in suit had to run. The note in suit is, therefore, not the contract of the defendant, and, as against him, is void.

9. That the plaintiff, on May 14, 1875, got judgment against said R. S. Long on the note in this suit in the Court of Common Pleas of Greene county, Pa., at No. 55, June term, 1875, for the full amount of the note and interest. After legal notice to the bank to proceed and collect this judgment at once, or the defendant would hold himself discharged from all liability on the note, the bank on May 28, 1875, issued execution on said judgment. Between
44 the issuing and the levy of said execution the plaintiff permitted said Long, against the consent of the defendant, to remove, secrete and otherwise dispose of, for his own benefit, and to the great damage of the defendant, (if defendant is liable on said note,) a large amount of personal property upon which said execution was a lien, which was then worth at least $1,000. That on June 3d, 1875, the plaintiff levied by virtue of said execution upon certain other personal property of said Long, worth about $900, and advertised the same for sale. Shortly afterwards and before sale the plaintiff directed the sheriff to do nothing further with the execution till he got further orders from the plaintiff. The plaintiff having

failed to proceed with its said judgment and execution against Long, the defendant, on June 18, 1875, served a written notice upon the plaintiff directing it to proceed and collect said judgment against Long as speedily as the law would permit, and that any and every failure to so proceed and collect said judgment would be urged as an additional defence by the defendant against the note and claim in suit. The plaintiff wholly disregarded said notices, lost the
45 lien of, and finally stayed the said execution against Long, and has ever since persistently refused to proceed and collect said judgment. That the plaintiff's claim cannot now be made out of said Long's property. That Long being a real debtor, and the defendant nothing more than a mere surety on the note in suit, and both having been so known to the plaintiff from the beginning of the loan, the plaintiff's claim, so far as the defendant is concerned, is paid to the extent of the value of the personal property of Long levied upon and abandoned by the bank. That the plaintiff's claim is also further paid to the extent of the value of the other personal property of Long which it permitted him to convert to his own use between the issuing and the levy of said execution, provided the defendant don't get credit for the value of the last named property in case No. 108, May term, 1879.

10. That the rate of interest limited for banks of issue organized under the laws of the state of Pennsylvania was, at the times the original of the note in suit and its several renewals were taken and still is, six (6) per cent. per annum in advance and no more.

46 That all the statements contained in this affidavit of defence are true and correct so far as the same are stated from defendant's own knowledge, and that so far as the same are stated from information he believes them to be true and correct; and further, that the defendant expects to be able to prove all of said statements on the trial of this case.

BARZILLA STEPHENS.

Sworn to and subscribed this 24th day of April, 1879, before me.

H. D. GAMBLE,
Clerk.

(Endorsed:) No. 107; May term, 1879; U. S. Circuit Court, W. dist. of Pa.; the Monongahela National Bank of Brownsville, Pa., *vs.* Barzilla Stephens; affidavit of defence; filed April 24, 1879; H. D. Gamble, clerk; T. C. Lazear, A. A. Purman and P. A. Knox.

47 *Receipt of Prothonotary of Greene Co. for Costs.*

Monongahela National Bank of Brownsville *vs.* Barzilla Stephens.	No. 50, June term, 1875; costs, $30.10.

SAME, pl'ff, *vs.* AZARIAH STEPHENS, endorser of BARZILLA STEPHENS.	No. 52, June term, 1875; costs, $30.15.
SAME, pl'ff, *vs.* BARZILLA STEPHENS, adm'r of ISRAEL STEPHENS.	No. 53, June term, 1875; costs, $26.95.
SAME, pl'ff, *vs.* BARZILLA STEPHENS, endorser of ISRAEL STEPHENS, dec'd.	No. 54, June term, 1875; costs, $27.25.

April 28, 1879, rec'd of pl'ff, by hands of E. M. Sayers, one hundred and fourteen 45-100 in full of all costs in the above case. See duplicate receipts on docket.

G. W. ULLOM, *Pro.*

(Endorsed:) Nos. 106, 107, 108, & 109, May term, 1879; Monongahela National Bank *vs.* Barzilla Stephens et al.; receipt of prothonotary of Greene county for costs; notice hereof given P. A. Knox, esq., personally; J. W. M.; filed April 30, 1879; Knox & Reed.

48 *Rule for Judgment.*

In the Circuit Court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK *vs.* BARZILLA STEPHENS.	No. 107. May Term, 1879.
SAME *vs.* BARZILLA STEPHENS, adm'r of Israel Stephens.	No. 106. May Term, 1879.
SAME *vs.* AZARIAH STEPHENS.	No. 109. May Term, 1879.
SAME *vs.* BARZILLA STEPHENS.	No. 108. May Term, 1879.

And now, April 26, 1879, on motion of Knox & Reed, attorneys for the plaintiff in the above cases, a rule is granted upon the defendants in each case to show cause why judgment should not be en-

tered against them in each case for want of a sufficient affidavit of defence, for the reasons hereto attached.

PER CURIAM.

49 *Reasons.*

First. As to the first paragraphs of the defendants' affidavits of defence, to wit, that this court has no jurisdiction of these causes for certain reasons therein specified, plaintiff says the same is not true as a proposition of law, and that upon defendants' own showing this court has jurisdiction of said cases.

Second. As to the second paragraphs of said affidavits, plaintiff denies that the proposition of law therein announced are true in law.

Third. That as to the third paragraphs of said affidavits, plaintiff claims that the allegations therein contained would constitute no defence to these actions if the same were true. That said allegations of fact are not true on the defendants' own showing, inasmuch as no usurious interest was charged on the loan represented by the note in suit.

Fourth. As to the fourth paragraphs of said affidavits of defence, plaintiff claims they contain no allegations of fact which, if true, would defeat plaintiff's right to recover from the defendants the full amount of its claim. As to the conclusion of law therein contained, plaintiff denies that the same are sound and correct.

Fifth. As to the allegations of fact contained in the fifth, sixth, and seventh paragraphs of defendants' affidavits, plaintiff says
50 they would constitute no defence if true. As to the conclusions of law therein contained, plaintiff denies that they are correct.

Sixth. As to the remaining allegations of fact and statements of conclusions of law in said affidavits, plaintiff claims they are wholly inadequate as a defence to its suits.

Seventh. That said affidavits as a whole are informal, insufficient, and defective, and assuming the facts to be as the defendants allege them, they constitute no defence to the plaintiff's claim.

KNOX & REED,
April 26, 1879. *Plaintiff's Attorneys.*

From the record.
[SEAL.]
H. D. GAMBLE,
April 26, 1879. *Clerk.*

(Endorsed:) Nos. 106, 107, 108, and 109, May term, 1879; Monongahela National Bank of Brownsville *vs.* Barzilla Stephens et al.; rule and reasons for judgments for want of sufficient affidavit of defence; received by mail April 28th, 1879, at 8 p. m.; P. A. Knox, attorney for defendants.

51 *Notice of rule for judgment and service.*

In the Circuit Court of the United States for the western district of Pennsylvania.

MONONGAHELA NATIONAL BANK of Brownsville, Pa., *vs.* BARZILLA STEPHENS, as endorser, &c. } No. 107. May T., 1879.

To PURMAN and KNOX, def'ts att'ys:

Take notice, that the rule to show cause why judgment should not be entered in this case for want of a sufficient affidavit of defence will be called up for argument on Tuesday morning, May 27th, 1879.

KNOX & REED,
SAYERS & SAYERS,
Pl'ff's Att's.

May 24, 1879.

(Endorsed:) No. 107, May term, 1879; Monongahela Nat. Bank *vs.* Barzilla Stephens; proof of service; filed May 27, 1879.

Service.

May 24, 1879, 11.30 a. m.

Served this day personally on Purman and Knox, def'ts att'ys, by reading the within notice to them and by giving Mr. Knox a true copy of the same. So says

JAS. E. SAYERS.

Aff'd and sub'd this 24th day of May, 1879, coram.

G. W. ULLOM, *Pro.*

52 *Supplemental affidavit of defence.*

In the Circuit Court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK of Brownsville *vs.* BARZILLA STEPHENS. } No. 107, May term, 1879.

WESTERN DISTRICT OF PENNSYLVANIA.

Barzilla Stephens, being duly sworn, says as a further defence to the above action, that when the note in suit was presented to him for indorsement the note was not filled up, but was a blank paper, filled up afterwards by the teller of the plaintiff bank, and deponent was not present, nor did he know what amount was filled in to complete said note, and he says, therefore, that he did not agree to pay the

usurious interest charged in said note as part thereof, which interest was in excess of six per cent. per annum.

And deponent further says that up to the present time the costs of the suit upon said note in the Common Pleas Court of Greene county have not been paid in full, the fees of witnesses, depo-
53 sitions, &c., still remaining unpaid.

B. STEPHENS.

Sworn and subscribed before me this 27th May, 1879.

H. D. GAMBLE, *Clerk.*

(Endorsed:) No. 117; May term, 1879; the Mon. Nat. Bk., Brownsville, *vs.* Barzilla Stephens; supplemental affidavit of defence; filed May 27, 1879.

54 *Order making rule for judgment absolute.*

In the Circuit Court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK of Brownsville *vs.* BARZILLA STEPHENS. } No. 107, May term, 1879.

Rule to show cause why judgment should not be entered in the above-stated case in default of a sufficient affidavit of defense, argued by W. S. Purviance and P. C. Knox, esq'r's, for rule, and contra by T. C. Lazear and P. A. Knox, esq'r's; and after consideration by the court, rule made absolute and judgment directed to be entered in favor of plaintiff therein.

55 *Precipe for judgment.*

In the Circuit Court of the United States for the western district of Pennsylvania.

MONONGAHELA NATIONAL BANK *vs.* BARZILLA STEPHENS. } No. 107, May term, 1879.

H. D. GAMBLE, esq.:

Enter judgment in above case as per order of court this day entered making absolute the rule for judgment for want of sufficient affidavit for defence.

Liquidate as follows:

Debt	$9,500 00
Interest from 19 Nov., 1874	2,577 00
Protest fees	1 87
Total	$12,078 87

KNOX & REED,

May 27, 1879. *Pl'ff's Att'ys.*

(Endorsed:) No. 107; May term, 1879; Monongahela National Bk. *vs.* Barzilla Stephens; praec. for judgment; filed May 27, 1879, at 4.50 p. m.; H. D. Gamble, clerk; Knox & Reed.

56 *Judgment Docket Entry.*

No.	Term.	Year.	Plaintiff.	Defendant.	Date of judgment	Debt.	Costs.	Attorney.
107	May.	1879	Monongahela National Bank of Brownsville.	Barzilla Stephens.	May 27, 1879.	$12,078 87	$25 72	P. 56.

57 *Petition for Writ of Error and Affidavit.*

In the Circuit Court of the United States for the western district of Pennsylvania.

THE MONONGAHELA NATIONAL BANK of Brownsville
vs.
BARZILLA STEPHENS. } No. 107, May term, 1879.

To the Hon. WM. MCKENNAN, judge of said court:

The petition of Barzilla Stephens, the defendant above named, respectfully represents that, feeling aggrieved by the judgment entered against him in the above case, he is desirous that the same be reviewed by the Supreme Court of the United States. He therefore prays that a writ of error be entered for such purpose.

BARZILLA STEPHENS.

WESTERN DISTRICT OF PA., *ss.*

Barzilla Stephens, the defendant above named, being duly sworn, says that he does not sue out the writ of error in above case for the purpose of delay.

BARZILLA STEPHENS.

Sworn and subscribed before me this 6th June, 1879.

H. D. GAMBLE, *Clerk.*

(Endorsed:) No. 107, May term, 1879; Monongahela National Bank, Brownsville, *vs.* Barzilla Stephens; petition for writ of error and affidavit. Filed May 18, 1881.

58 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the United States Circuit Court for the western district of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, between the Monongahela National Bank of Brownsville, Pa., plaintiff, and Barzilla Stephens, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 2nd Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done to correct the error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of May, A. D. 1881.

[SEAL.] H. D. GAMBLE,
Clerk.

Allowed by— W. McKENNAN, *Cir. Judge.*

(Endorsed:) No. 107, —— term, 18—; writ of error; filed May 18, 1881; H. D. Gamble, cl'k.

59 UNITED STATES OF AMERICA, } *set.*
Western district of Pennsylvania, }

To the Monongahela National Bank of Brownsville, Pa., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States Circuit Court, wherein Barzilla Stephens is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this eighteenth day of May, A. D. 1881.

W. McKENNAN,
Judge of U. S. Cir. Court.